(3)

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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

CRIMINAL APPEAL No. 137 of 2006

836/06 (In Jail)

on 24.2.06

Shri B.M. Gupta

R/o D.R. (J)

APPELLANT :- **Jitendra Mishra S/o Late Ganesh Ram Mishra, Age about 24 years Occupation Cultivation, R/o. village Begudega P.S. Lailunga Distt. Raigarh (C.G.)**

VERSUS

RESPONDENT :- **State of Chhattisgarh through Station House Officer P.S. Lailunga Distt. Raigarh (C.G.)**

MEMO OF CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.137/2006

Jitendra Mishra

Vs.

State of Chhattisgarh

Post for Judgment: 14 .08.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

(38)

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.137/2006

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Jitendra Mishra

Versus

State of Chhattisgarh

Shri S.N.Nande, learned counsel with appellant.

Shri M.P.S.Bhatia, learned P.L. for the State.

J U D G M E N T

(Delivered on this 14th day of August, 2006)

This appeal is directed against the judgment dated 22.12.2005 delivered by Shri G.R.Sande, 4th Additional Sessions Judge (F.T.C.), Raigarh in Sessions Case No.58/2004 whereby the appellant was convicted under Section 498-A and 306 I.P.C. and sentenced to rigorous imprisonment for two years under Section 498-A of I.P.C. and to rigorous imprisonment for three years and six months and a fine of Rs.2000/- under Section 306 I.P.C. Both the sentences were ordered to run concurrently.

2. The appellant is in jail since 16.1.2004.

3. Co-accused Maheshwar Panda, a close relative, Santoshini, sister and Sumitra, mother of the applicant were acquitted of the charge under Section 498-A read with Section 34 of the I.P.C. and Section 304-B read with Section 34 of the I.P.C.

4. Brief facts are that the deceased Minakshi, daughter of Manoranjan Rath P.W.1, was married to the appellant herein on 11.2.2001. It is alleged that the appellant subjected her to cruelty and ill-treated her on account of demand for dowry. Minakshi consumed poison on 5.1.2004 and was shifted to Government Hospital, Patthalgaon at 5.05 P.M. on the same day by the appellant where she died at 5.35 P.M. Intimation was sent to Station House Officer, P.S. Patthalgaon by the Doctor on duty vide Ex.P.5. Merg intimation was written at P.S. Patthalgaon. Panchnama of dead body of Minakshi was prepared vide Ex.P.2/A which raised a suspicion of death due to consumption of poison. Autopsy was conducted by Dr. Y.K.Toppo P.W.11 who opined that death was as a result of cardiac respiratory arrest due to intake of some unknown poison and was suicidal in nature. A written complain was lodged by Manoranjan Rath at P.S. Lailunga stating that the appellant and his relatives had committed murder of Minakshi after forcibly administering poison to her. After completion of investigation, a challan was filed under Section 498-A read with Section 34 I.P.C. and 304-B read with Section 34 I.P.C. against the appellant and three other relatives, as mentioned in paragraph 3 (supra).

5. The appellant abjured the guilt. The prosecution examined as many as 17 witnesses. The appellant did not give any explanation about the death of Minakshi on 5.1.2004 and pleaded innocence. Alok Ranjan D.W.1 was examined as a defence witness. Relying upon the evidence led by the

prosecution, the learned trial Judge convicted the appellant under Section 498-A and 306 of the I.P.C. and sentenced him as aforesaid in paragraph 1.

6. Shri S.N. Nande, learned counsel for the appellant has contended that the evidence led by the prosecution did not establish the guilt of the appellant under Section 498-A and 306 of the I.P.C. as there was no evidence relating to any abetment by the appellant resulting in suicidal death of Minakshi. It was urged that the prosecution has failed to produce and prove the viscera report of the deceased due to which it was also not established that death of Minakshi was due to consumption of poison. The testimony of Dharmcharan Panda P.W.6, Manoranjan Rath P.W.1 and Smt. Vishnu Priya P.W.2 relating to the harassment of the Minakshi by the appellant, was merely an afterthought since there was an admission by Smt. Vishnu Priya P.W.2 in paragraph 13 as also by Manoranjan Rath in paragraph 22 that at the time of marriage there was no demand for dowry. On the other hand, Shri M.P.S.Bhatia, learned Panel Lawyer argued in support of the impugned judgment.

7. Having considered the rival submissions, I have perused the evidence led by the prosecution with utmost circumspection. The testimony of Manoranjan Rath P.W.1 in paragraph 6 shows that the appellant did not even properly feed his daughter who always used to cry whenever he visited her matrimonial home. He also stated that he used to beg the

appellant and his relatives to properly treat his daughter but in vain.

8. It is true that Smt. Vishnu Priya P.W.2 has admitted in cross-examination paragraph 13 that there was no demand for dowry at the time of marriage but there is a clear assertion made by her in paragraph 7 of her testimony that the appellants used to treat her daughter with cruelty and did not even give proper food and used to subject her to all kinds of harassment. The testimony of Dharmcharan Panday P.W.6 depicts the cruel manner in which the deceased was treated like a servant and was made to eat the left over food. His testimony in paragraph 5 as also in paragraph 13 is wholly unrebutted in cross-examination. The defence has not contradicted this witness with his earlier statement under Section 161 Cr.P.C. Thus, there is reliable and cogent evidence on record to show that Minakshi was subjected to cruelty and harassment by the appellant. Conviction of the appellant under Section 498-A I.P.C. is well founded.

9. J.Minj P.W.8 stated that Minakshi was admitted by her husband i.e. the appellant in the hospital on 5.1.2004 and had told him that she had consumed poison. The autopsy report Ex.P.7 by Dr. Y.K.Toppo P.W.11 also leaves no room for any doubt that death of Minakshi was due to intake of some poisonous substance. The inquest Ex.P.2/A also shows that in the opinion of Panchas death of Minakshi was due to consumption of some poison. It is true that at the time of inquest, the relatives of

the deceased did not divulge harassment or cruelty by the appellant on Minakshi which resulting in her death but as held by the Apex Court in *Alamgir Sani v. State of Assam* **2003 AIR SCW 111,** no adverse inference can be drawn against the testimony of the parents on this count since the shock suffered parents after having seen their daughter dead in an unnatural manner would not have been able to immediately outpour the reasons therefor.

10. Section 113A of the Evidence Act reads as under:

> **"113A. Presumption as to abetment of suicide by a married woman.**--- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
>
> *Explanation.*--- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code, 1860 (45 of 1860)"

11. In the present case, it is thus established by the prosecution evidence that Minakshi had committed suicide on 5.1.2004 after consuming some poisonous substance. It is not disputed that her death had occurred within a period of 7 years from the date of her marriage. It is also established that the appellant had subjected her to cruelty. In these circumstances, a presumption can safely be drawn against the

appellant that suicide committed by Minakshi had been abetted by the appellant. Such a presumption is rebuttable. However, in the present case, the appellant has led absolutely no evidence or given no explanation whatsoever in his examination under Section 313 Cr.P.C. for the suicidal death of Minakshi. In this view of the matter, the presumption arising under Section 113A of the Evidence Act against the appellant has stood wholly unrebutted. Conviction of the appellant under Section 306 I.P.C. is thus also founded.

12. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that conviction of the appellant under Section 498-A and 306 I.P.C. and the sentence awarded thereunder by the learned trial Judge is well founded and does not call for any interference.

13. In the result, this appeal being without substance is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge